

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

THE UNITED STATES OF AMERICA,

plaintiff,

versus

3:24CR058

JARVON JAMES STARKEY,

defendant,

Sentencing

before Honorable Henry E. Hudson
Senior District Court Judge

February 6, 2025

Richmond, Virginia

GILBERT F. HALASZ
Official Court Reporter
U. S. Courthouse
701 East Broad Street
Richmond, VA 23219

APPEARANCES

Angela Mastandrea, Esq.

Assistant United States Attorney

for the United States

Carolyn V. Grady, Esq.

Assistant Public Defender

for the defendant

The defendant in his own proper person

1 THE COURT: All right.

2 Call the next case.

3 THE CLERK: Case number 3:24CR58.

4 United States of America versus Jarvon James
5 Starkey.

6 Ms Angela Mastandrea represents the United
7 States.

8 Ms Carolyn Grady represents the defendant.

9 Are counsel ready to proceed?

10 MS MASTANDREA: The United States is ready.

11 MS GRADY: Judge, defense is ready.

12 Good morning, Your Honor.

13 THE COURT: This matter is before The Court
14 this morning for sentencing.

15 Ms Grady, have you received a copy of the
16 presentence report and copy of the officer's
17 computation of the United States Sentencing
18 Guidelines?

19 MS GRADY: Yes, I have, Your Honor.

20 THE COURT: Turning first to the text of the
21 presentence report, are there any additions or
22 corrections to the report? I understand that you
23 have motions concerning the guidelines, but with
24 respect to the text of the report are there any
25 additions or corrections you want to bring to my

1 attention?

2 MS GRADY: Judge, all of the corrections were
3 made and listed in the addendum. So I have nothing
4 further.

5 THE COURT: All right.

6 Ms Mastandrea, any objections or any additions
7 or corrections?

8 MS MASTANDREA: No, sir. None.

9 THE COURT: The report will be ordered filed,
10 made a part of the record in the case, and this
11 Court will adopt the U.S. Probation Officer's
12 factual findings and conclusions, with the exception
13 of the U.S. Sentencing Guidelines.

14 The U.S. Probation Officer has determined that
15 this defendant has a total offense level of 34. He
16 is in criminal history category six. His guideline
17 range as calculated by the officer is 262 to 327
18 months.

19 I understand that you have issues concerning
20 the guidelines, but has the officer properly
21 calculated them based upon the information that he
22 had?

23 Ms Grady?

24 MS GRADY: Judge, he is properly determined to
25 be a career offender when the guidelines are

1 corrected, Judge.

2 THE COURT: Okay. I understand that.

3 MS MASTANDREA: We agree that he is a career
4 offender.

5 THE COURT: Very well.

6 I am going to deal with the 3553(a) factors and
7 then turn to the objections concerning the
8 guidelines.

9 This defendant was born and raised in
10 Wilmington, Delaware. He 35 years old. He resided
11 in Charlotte, North Carolina prior to his arrest.
12 His father is 65 years old. Resides in Delaware.
13 He is retired. He is in good health. There is no
14 history of drug abuse, and no history of any
15 criminal activity on his father's part.

16 His mother is 70 years old. She resides in
17 Newark, Delaware. She is retired from Bank of
18 America. She has no history of drug abuse or
19 criminal record.

20 His sister is 48 years old. She lives in
21 Massachusetts. She does have a criminal record and
22 a history of drug abuse.

23 His brother is 46. He resides in Delaware,
24 works construction, and does have a history of
25 substance abuse and a criminal record.

1 Mr. Starkey resided with his parents until
2 their divorce. He lived in a high crime area. He
3 has never been married. He has four children from
4 prior relationships; age three, two, one eight years
5 old and one is ten. All are in good health. He had
6 regular contact with them prior to his arrest. And
7 he provides some financial support.

8 The defendant basically is in good physical
9 condition. But he has injuries to his spine and
10 lower back from auto accidents. He does have a
11 gunshot wound to his stomach. He has had several
12 hospitalizations for drug overdoses, and he was
13 diagnosed with attention deficit disorder.

14 He reported to the probation officer that he
15 consumes three or four drinks per week, and he
16 regularly uses pain medication.

17 He earned his GED while confined at the
18 Pennsylvania Department of Corrections. He attended
19 public school through the ninth grade. He completed
20 several educational programs at Northern Neck
21 Regional Jail and the Pamunkey Regional Jail.

22 He was last employed at the Family Dollar Store
23 in Matthews County, North Carolina. And prior to
24 that he worked as a fork lift operator.

25 He has extensive criminal history. And we will

1 go through that a little bit later.

2 He has at least five felony convictions
3 beginning at age 17. He has had 20 convictions,
4 including possession of heroin, resisting arrest,
5 conspiracy, second degree agreement to engage in
6 felony conduct.

7 Those are the basic 3553(a) factors.

8 With respect to his criminal history that will
9 be the subject of motions, we will attend to that
10 later.

11 Either side have any evidence you want to put
12 on this morning? I may have asked that before. If
13 I did, I apologize.

14 MS MASTANDREA: No, Your Honor.

15 MS GRADY: No evidence, Judge. No, sir.

16 THE COURT: You have some objections to the
17 guidelines and a motion for a downward variance, is
18 that correct, Ms Grady?

19 MS GRADY: That's correct.

20 THE COURT: I will hear those right now. I
21 have read all the memoranda filed by both sides and
22 I am ready to hear argument.

23 MS GRADY: Yes, sir.

24 Judge, I would like to address the objections
25 first.

1 THE COURT: To the guideline calculation?

2 MS GRADY: Sorry?

3 THE COURT: To the guidelines calculation?

4 MS GRADY: Yes, sir.

5 THE COURT: Yes, ma'am, you go right ahead.

6 I read your memorandum, I reviewed the cases,
7 and I appreciate your fine work.

8 MS GRADY: Yes, sir.

9 Judge, I wanted to make it clear that the
10 guidelines account for him being a career offender
11 where he doesn't under the case law in Delaware and
12 under the Fourth Circuit law under Campbell, and the
13 guidelines as they existed prior to them being
14 amended on November 1st of 2023. That these two
15 predicate offenses, which is specifically paragraph
16 30 and paragraph 40 of the presentence report, do
17 not constitute a predicate offense and therefore
18 Mr. Starkey is not a career offender.

19 And I would like to address my argument at this
20 time on that.

21 THE COURT: You go right ahead.

22 MS GRADY: Yes, sir.

23 Judge, as you know --

24 THE COURT: There is some question as to
25 whether Campbell is good law, and I want to hear you

1 on that.

2 MS GRADY: Well, it is -- so at the time that
3 Campbell addressed the issue of whether attempts
4 were in the statute or not in the statute in West
5 Virginia the guidelines did not -- it was in the
6 commentary that they included the word "attempt."
7 So once Campbell came out and said that a statute
8 that encompasses both an act and attempt is not --
9 is not a predicate because it is too broad.

10 THE COURT: But here there is two separate
11 statutes in Delaware.

12 MS GRADY: There are. There were two separate
13 statutes in the Groves case as well as the Davis
14 case. But we had a specific case on point from the
15 Delaware Supreme Court that has precedential value
16 that says that the attempts are punished under the
17 statute. That is the Boardly case that has been
18 briefed. Obviously, The Court, I am sure has a
19 copy, but I have another copy for The Court if you
20 want.

21 THE COURT: I reviewed all your cases, and I
22 appreciate you supplying them.

23 MS GRADY: Thank you, Judge. I always try to.

24 So Boardly, the Supreme Court in Boardly, it
25 was a defendant, it was a female, who was charged

1 under the same statute as Mr. Starkey, and yet she
2 only attempted to do the crime. And her lawyers
3 tried to argue, hey, it was only an attempt, she
4 should not be punished by the 15-year mandatory
5 minimum which was associated with that crime if it
6 was complete.

7 And the, as briefed, and as is quoted on page
8 three of my brief, of my objection, the Supreme
9 Court determined that she could not get out from
10 under the fact that she was convicted under that
11 statute, and that statute expressly includes attempt
12 to transfer. So she was expressly -- put forth the
13 argument that attempted -- and Supreme Court of
14 Delaware said, no, it is in fact treated as the
15 primary crime, which is exactly what happened here.

16 Mr. Starkey, not what he did, its what the
17 statute of conviction and the elements.

18 THE COURT: Under my reading of this in the
19 State of Delaware there is separate statute that
20 makes an attempted distribution a consummated
21 transaction.

22 MS GRADY: That's correct. But, just like in
23 Campbell, as Campbell decided -- and Campbell is,
24 obviously, I am arguing, is the precedent that this
25 court should follow -- that that's what West

1 Virginia was. Virginia had, West Virginia had a
2 different statute. And because the guideline didn't
3 include attempt Campbell said likewise.

4 Now, Delaware also has a separate statute.
5 But, the Supreme Court of Delaware said, no,
6 attempts are punished under the primary offense,
7 which I think is 4752 or 54. Therefore, the
8 separate statute doesn't matter. The attempts are
9 subsumed into the crime itself, which is, the
10 Delaware statute defines delivery as attempted
11 transfers.

12 So it is exactly Campbell. And the United
13 States has brought up other cases from third circuit
14 or from the -- I can't the other -- but this court
15 has direct action from Campbell and the Fourth
16 Circuit. It is not like -- it's not like Davis.
17 Because of --

18 THE COURT: Well, the United States in Miller,
19 didn't they indicate that it does qualify as a
20 controlled substance offense?

21 MS GRADY: I'm sorry. Say that question again.

22 THE COURT: U.S. versus Miller, Fourth Circuit,
23 case, 75 F 3d 215. Fourth Circuit case. Came out
24 in late 2023.

25 MS GRADY: Miller dealt with, not with the

1 Delaware statute.

2 THE COURT: It dealt with a similar statue,
3 though.

4 MS GRADY: No, I could find nothing to deal
5 with the Delaware statute. That is what is at
6 issue. That is why it is sort of a case of first
7 impression, which is why I originally didn't brief
8 it, because I didn't see it. And in looking -- so,
9 Judge, it's, this is specific to Delaware.

10 And the Delaware Supreme Court has spoken. So
11 I don't think it had to be as complicated as,
12 because we have Campbell as the law, there is a
13 question about whether Grove and Davis, and I
14 suppose Miller, Judge, would say that there are
15 other statutes that deal with it. But those are --
16 those are other states.

17 THE COURT: But to repeat my comment earlier Ms
18 Grady, isn't there a Delaware statute that makes an
19 attempted distribution a consummated sale of drugs?

20 MS GRADY: There is a statute that says that an
21 attempt is an illegal act, yes.

22 THE COURT: It says it is an act of
23 distribution, does it not?

24 MS GRADY: I am not aware of that, Judge.

25 THE COURT: It stopped short of a completed

1 drug transaction.

2 MS GRADY: Right. Which is, I suppose, why the
3 Delaware Supreme Court decided that even though that
4 defendant was arguing, and she wasn't charged with
5 attempt, she was charged under the statute that
6 carried the 15 mandatory minimum. Fifteen year
7 mandatory minimum. She tried, that defendant tried
8 to get out from under that by saying, I committed an
9 attempt. There is a separate statute. I should not
10 be punished under the 15 year mandatory minimum.
11 And the Delaware Supreme Court said, no, no, an
12 attempt is part of the statute, you are subject to
13 the 15 year mandatory minimum. That is precedential
14 value. Supreme Court orders are precedential value
15 in Delaware, and therefore they should be
16 precedential value in this case with this Court.

17 So, yes, there is, there are separate statutes.
18 But this case is completely analogous to Campbell,
19 which is still good law on that particular issue.

20 That is my point, Judge, on that.

21 THE COURT: Okay.

22 MS GRADY: The United States has made a
23 secondary argument that this is a divisible statute,
24 that the Delaware statute is divisible. Of course
25 the United States has the burden to prove whether it

1 is a divisible or not. They have the burden of
2 showing the statute treats manufacture, distribute,
3 possess with intent as separate elements, not
4 alternative means. As The Court knows, as I have
5 cited in my reply brief on page three the government
6 hasn't cited to a single case that indicates the
7 statute is divisible as to act. The case that they
8 put forward, United States versus Jackson, which was
9 an order from a District Court judge, I believe,
10 that Jackson talked about divisibility of the
11 statute in terms of what was distributed. Marijuana
12 or cocaine or whatever.

13 And specifically the -- under the case of
14 Johnson versus State, which is a Delaware case, the
15 Supreme Court affirmed that when a defendant was
16 indicted for delivery he can be convicted under the
17 language of possession with intent to distribute.

18 So, Delaware court has again decided that the
19 statute was indivisible; there are a number of
20 elements, not different crimes.

21 So I think that that is not a fact that -- that
22 is not an argument that should be prevail either.

23 So I think the issue seems convoluted, but I
24 think it is more simple. It is, does Campbell
25 apply, does Delaware -- I mean, there is no Fourth

1 Circuit case on Delaware -- does Delaware law say
2 that attempts should be treated as -- that are in
3 the statute, and if they are in the statute,
4 Campbell says that they do not count as a predicate
5 offense.

6 That is my opening remarks on that.

7 THE COURT: Okay. Thank you very much.

8 Ms Mastandrea.

9 MS MASTANDREA: I think that this has become so
10 convoluted and complex when it need not be.

11 Mr. Starkey was convicted of possession the
12 with the intent to deliver cocaine and possession
13 with intent to deliver PCP. As The Court has noted
14 and is fully aware an attempt is a separate statute
15 under Delaware law. And, as I cited in our response
16 to the defense objection to the career offender
17 designation, the statute that, the two statutes that
18 he was constricted under in their definition mirror
19 what happened in the federal cases, in the federal
20 statute.

21 And Groves says that the statute of an attempt
22 under federal law would be superfluous if it was a
23 part of the drug trafficking under federal law.

24 The same thing with Delaware. It is a
25 completely parallel and on point analysis of the two

1 statutes that Mr. Starkey was convicted of. He was
2 convicted of possession with intent to deliver
3 cocaine, and possession with intent to deliver PCP.

4 In Campbell, the court in Campbell said that
5 West Virginia had not separated out attempt,
6 separated from the distribution crimes there.

7 So that is why it was treated a little bit
8 differently. But Groves is what controls here.

9 THE COURT: A separate Delaware statute that
10 makes an attempt a drug distribution offense --

11 MS MASTANDREA: Correct.

12 THE COURT: -- as I read the law.

13 MS MASTANDREA: Yes.

14 So here we have the two predicate offenses;
15 possession with intent to distribute cocaine,
16 possession with intent to deliver, or deliver
17 cocaine, and deliver PCP. It mirrors the federal
18 definition. There is a separate statute for the
19 attempt. And the case that the defendant cites, The
20 Court was talking about plea agreements. Often
21 times a plea agreement they will be allowed to plead
22 to a different charge than what is in the
23 indictment. In this case the defendant pled guilty
24 to possession with intent to deliver cocaine,
25 possession with intent to deliver PCP. There is no

1 question about it. Under the divisibility you can,
2 you know, I laid it all out, but these two statutes
3 are divisible, and the drug, the identification of
4 the drug is also something that has to be proved.
5 So it is even further divisible by the actual drug
6 that was sold.

7 For example, you can't just come into court and
8 say that he distributed a controlled substance. In
9 Delaware you say he distributed cocaine, and cocaine
10 had a separate subcategory to that.

11 So, in Delaware possession with intent to
12 deliver is a completed offense. It is divisible
13 because they define multiple crimes. And the state
14 has to prove distinct elements.

15 So, I think that is all laid out. It is a
16 categorical match to what the Fourth Circuit talked
17 about in Groves. I think, Judge Payne also was of
18 the same opinion on a Virginia statute that again
19 mirrors what was happening here in Delaware in the
20 Tracy Brown case that --

21 THE COURT: How did that come out in his court?

22 MS MASTANDREA: Found that Mr. Brown was a
23 career offender under the Virginia -- he was charged
24 with possession with intent to distribute marijuana.
25 And possession with intent to distribute -- if I

1 could have just a moment, Your Honor, I will tell
2 you what the second one was -- I don't want to
3 misstate. I think it was also cocaine.

4 If I could have just a moment, Judge.

5 THE COURT: Take your time.

6 MS MASTANDREA: Yes.

7 He was charged with possession with intent to
8 distribute marijuana, and possession of Schedule I
9 controlled substance with intent to distribute.
10 That was in Tracy Lorenzo Brown, Jr. That case 3:22
11 CR 134 with Judge Payne's opinion at docket entry
12 57. Again, that mirrors what's happening in this
13 case. It is exactly the same thing.

14 So, it seems to me, it seems much simpler than
15 what we are making it here. 802 11 under the
16 Federal Code mirrors Delaware's definition of
17 deliver. Both are drug trafficking offenses. There
18 is a separate offense in Delaware for an attempt.
19 He was not charged with any attempt. He was charged
20 with distribution, possession with intent to
21 deliver. That is under Groves a drug trafficking
22 crime. It would be even under Campbell because
23 under Campbell there would be were, the attempt was
24 part of the substantive offense and so here that is
25 not the case.

1 And so we would be saying, for example, someone
2 convicted of attempt in federal court under 21
3 U.S.C.A. 846, that wouldn't count any more because
4 it would have been subsumed in 841. That doesn't
5 make any sense there, federally, and it doesn't make
6 any sense under the Delaware code.

7 We ask The Court to deny the defendant's
8 motion.

9 THE COURT: Thank you very much.

10 MS MASTANDREA: Thank you.

11 Ms Grady, I will give you the final word.

12 MS GRADY: Briefly, Judge.

13 The kind of -- the facts of the charge for
14 which Mr. Starkey was convicted in paragraphs 30 and
15 40 aren't the relevant consideration. The relevant
16 consideration is what are the elements of the crime
17 that he was convicted of. It is the evidence that
18 matters not the facts.

19 Regarding, you know, the way Campbell came out,
20 it upset a lot of, a lot of case law. Because the
21 Fourth Circuit said, oh, there is an attempt in
22 there. And it upset -- so it voided the career
23 offender designation for Ms Campbell. But the issue
24 is that the United States Sentencing Commission
25 says, huh, we need to change that. And within a

1 year of Campbell they moved the attempt language
2 from the commentary up into the actual guidelines,
3 which denotes that both the Fourth Circuit under
4 Campbell, under then guidelines, which apply here,
5 was a problem. There was a problem regarding the
6 over-breadth of the statute in West Virginia, and I
7 would submit that is the same over-breadth that we
8 have in Delaware. That has not been ruled on. So I
9 would submit that there was a change for a reason.
10 The Fourth Circuit determined there was a problem
11 when attempts are within. And so whether there --
12 it's, I wouldn't say irrelevant as to whether there
13 is an attempt statute. There are -- the Fourth
14 Circuit has tried to distinguish Campbell by saying
15 if there is a separate attempt statute. But the
16 fact remains that in Delaware attempts are punished
17 as under the same offense as Mr. Starkey was
18 punished, and therefore it's an over broad
19 definition of what a possession -- what a controlled
20 substance is under the predicates for career
21 offenders under 4 B 1.2, and The Court should not
22 find that these are predicate offenses, Judge.

23 THE COURT: Thank you very much, Ms Grady.

24 All right.

25 Before the Court this morning is the

1 defendant's objection to the career offender
2 enhancement as applied by the probation officer in
3 calculating the United States Sentencing Guidelines
4 in this case.

5 Absent the two predicate offenses he would not
6 be a career offender. Because the underlying
7 statute includes attempted transfers, which are not
8 a completed delivery, the defendant contends that he
9 does not qualify as a career offender. He has two
10 relevant convictions here that are the principal
11 qualifications or justification for being a career
12 offender.

13 Number one, in 2012 possession with the intent
14 to deliver phencyclidine. And 2019 possession of
15 cocaine with the intent to deliver.

16 The defendant argues that because both Delaware
17 statutes are underlying convictions include
18 attempted delivery of drugs they are not controlled
19 substance offenses under Delaware law. Citing
20 United States versus Campbell, 22 F4th 438, Fourth
21 Circuit case, 2022. However, Delaware has separate
22 statutes that define completed acts of delivery, as
23 the actual, constructive, or attempted transfer from
24 one person to another. That is 11 Delaware code
25 page section 531. Moreover, under Delaware law an

1 attempted transfer of a controlled substance is
2 statutorily a completed drug transaction. The
3 statute separately criminalizes attempt offenses.
4 Therefore, as the Fourth Circuit concluded in United
5 States versus Miller, 75 F4th 215, Fourth Circuit
6 case, 2023, it separately qualifies as a controlled
7 substance offense.

8 Recently the Fourth Circuit reaffirmed this,
9 reaffirmed this holding in Miller in United States
10 versus Jackson, which is 2025 W L 34 989 1,
11 January 31st, 2025 opinion where they declined to
12 follow Campbell and reaffirmed their position in
13 Miller. So The Court finds that attempted transfer
14 of controlled substances is a controlled substance
15 offense under Delaware law.

16 So the objection is overruled. And I am going
17 to explain the ruling herein and clarify it a little
18 bit more in a detailed forthcoming written opinion.
19 But The Court believes that based upon the record
20 and the law in Delaware he has properly been
21 classified as a career offender.

22 The objection is overruled.

23 I will now turn, Mr Grady, to your motion for a
24 downward variance.

25 MS GRADY: Thank you, Judge.

1 So, Your Honor is aware of, obviously, of my
2 position regarding the motion for a downward
3 variance. I briefly briefed the issue of whether
4 the downward departure was necessary, but within
5 that briefing I admitted that it wouldn't change his
6 guideline. But I wanted The Court to note that
7 things aren't as bad as they seem because he is
8 certainly closer to criminal category five.

9 That is all I will say about downward
10 departures. I understand it's not the strongest
11 argument, and I would like to focus on the downward
12 variance.

13 THE COURT: I always appreciate your integrity.

14 MS GRADY: Thank you, Judge.

15 You know -- yes.

16 So the issues we have before The Court and what
17 I ask The Court to downwardly vary on if The Court
18 found that Mr. Starkey was a career offender is on a
19 number of grounds.

20 The first ground is that the offenses, one in
21 2011, one in 2018, were the arrests. That was when
22 he was 21 years old and when he was 29. He is now
23 35. These are offenses under which Mr. Starkey
24 received a total sentence of 18 month. So, you
25 know, when you look at the 3553(a) factors that have

1 been briefed, one of the things The Court has to
2 look at is whether the sentence is sufficient but
3 not greater than necessary.

4 The career offender guideline increased by
5 seven levels because of those two offenses.
6 Mr. Starkey is a criminal history category six. He
7 is that. And the guidelines would be 130 to 162
8 months. That is a range that is more, which is more
9 commiserate with what this court should do because
10 those seven levels would increase because of the --
11 because of the career offender status. The career
12 offender status I think -- well, I know from case
13 law -- was originally intended to punish the king
14 pin, the folks that are the really bad individuals,
15 the habitual drug dealers. And understanding that
16 when I put in my pleading things about the fact that
17 Mr. Starkey is not a king pin, we have two priors;
18 one when he was 21, when he was 29. He has other
19 criminal history. There is no question.

20 THE COURT: Well, he has 18 criminal history
21 points; five felony convictions, three of them
22 involving drug trafficking.

23 MS GRADY: Right. Well, one of them -- two of
24 them involved drug trafficking.

25 The issue that I see is that the only

1 difference between Mr. Starkey's guideline on
2 whether he is basically when he is 27 versus a 34,
3 which is what the guidelines have him as, is the
4 criminal, is he a career offender status, which I
5 say over represents his history. He has crime.
6 There is no question. But the career offender
7 status is meant to punish drug dealers. It is --
8 Mr. Starkey has those. But one when he was 21 one
9 when he was 29. As you know, Judge, the United
10 States Sentencing Commission is looking, and has
11 asked for comment, and is considering amending the
12 career offender guideline to deal with punishment as
13 a career offender for two prior federal offenses.
14 They are trying to take state offenses off the table
15 for predicate offenses because states treat folks
16 differently.

17 In Virginia he would have gotten maybe 18
18 months on one of them. Maybe as this court has seen
19 people deal drugs in the City of Richmond you get no
20 time. It is a suspended sentence.

21 THE COURT: That is why so many cases come into
22 Federal Court. We realize that.

23 MS GRADY: I do. I mean, I have been here
24 twenty years. But that is also why the Sentencing
25 Commission is recognizing that there are so many

1 state convictions, and plea agreements that come
2 into play because of the five-year mandatory minimum
3 that the Commission itself, and I am putting this on
4 the record for any kind of future whatever, he,
5 Mr. Starkey, has two priors and no federal offenses.
6 And the United States Sentencing Commission at this
7 time is considering changing the predicate offense
8 language to just be federal offenses.

9 So Mr. -- so that is one of the issues. I
10 pointed in my brief, and I believe it was on the
11 statistics section, statistics, you know are what
12 they are, but the United States Sentencing
13 Commission keeps them. And the Sentencing
14 Commission kept them regarding career offender
15 punishments. That is why -- and the severity of the
16 increase from a non career offender guideline to a
17 career offender guideline.

18 And in the case I am referring in my brief on
19 page nine -- eight, nine, and ten -- the average
20 sentence for a drug trafficking only career offender
21 was 134 months. So that is the -- that is the
22 United States Sentencing Commission keeping track of
23 what judges do all over the country with folks who
24 are determined to be career offenders and non
25 violent career offenders. And non violent is

1 obviously they didn't have a robbery, murder or
2 shooting or anything like that. Mr. Starkey doesn't
3 have that. He has some conduct that is not helpful
4 to my argument. But he is not, cannot be deemed to
5 be a violent offender under the career offender
6 guidelines because there are only two predicate
7 offenses are possession with intent and delivery
8 under the Delaware statute.

9 THE COURT: I don't know that being a violent
10 offender is necessarily a prerequisite to being a
11 career criminal. It is a factor to consider, you
12 are right --

13 MS GRADY: Right.

14 THE COURT: -- but it is not controlling.

15 MS GRADY: No. It's not controlling. But I
16 think my argument is very different if Mr. Starkey
17 sits here with two robbery convictions and two
18 firearms. I can't say he is a non violent offender.
19 I can say now that he is because the predicate
20 offenses are two possession with intent to
21 distributes and/or drug trafficking crimes.

22 The Commission itself looks at the statute of
23 what career offenders are sentenced all over the
24 country. And the average sentence is 134 month.

25 So that is, again, a part of my basis of why I

1 think Mr. Starkey needs to receive a sentence that
2 is less than the guidelines as a career offender.
3 And that I think it is much more suitable to be in
4 that range that doesn't account for this random
5 seven point increase in the offense level.

6 If Mr. Starkey was criminal history category
7 three and he went from three to six because of those
8 two offenses, I think that there is an argument that
9 would probably shoot mine in the foot. But here we
10 have the it is properly computed category six, it
11 does account for the drugs, it does account for his
12 criminal history, and it increases by seven levels.

13 And what I said originally when I started
14 talking is that this court is tasked with issuing a
15 sentence that is sufficient but not greater than
16 necessary.

17 The longest sentence -- and in order to provide
18 deterrence and adequate punishment, and so forth.
19 Mr. Starkey's longest sentence was 18 months. If
20 this court were to sentence Mr. Starkey at the high
21 end of 161 or 162 months, that is approximately nine
22 times the sentences he previously received. If this
23 court goes to the low end of the career offender
24 guidelines, it is like 14 times.

25 THE COURT: I understand that my state

1 colleagues are very compassionate people. We
2 understand that.

3 MS GRADY: Right. But I am saying that this is
4 in, this is in the standard that this court must
5 look at. You have to issue a sentence that's not
6 greater than necessary. Nine times his previous
7 sentences versus 14 times, 15 times. In fact, that
8 is over kill. That is something that is beyond just
9 deterrence. That is just --

10 THE COURT: But those sentences obviously were
11 not sufficient to deter his criminal behavior. And
12 those cases were within a year or less than a year
13 he was back out committing crime again.

14 MS GRADY: Right. And I think that goes to one
15 of my second points, which is the substance use
16 disorder, the incredible problem that he has. The
17 incredible addiction that drives him to do some
18 incredibly stupid things. I mean, driving and
19 having accidents, driving and having problems.
20 Using embalming fluid to get high. Using it as a
21 vehicle. They shoot that into dead bodies. And
22 Mr. Starkey is shooting that into his live body in
23 order to get high. That is chemicals in your brain.
24 You know, he is not all -- you know, he is not
25 thinking with a full deck here, Judge, if I can mix

1 all kinds of metaphors there. He had a drug problem
2 early when he witnessed his sister.

3 The United States has made good points that his
4 parents -- and The Court has -- that his parents are
5 good folks and that they struggled with the
6 problems. But his mom did recognize that
7 Mr. Starkey fell below the radar when she had to
8 take care of his older sister's children. And
9 Mr. Starkey started using alcohol at a young age.
10 Mr. Starkey started using other drugs at a young
11 age. And then because those drugs didn't take away
12 the pain or fill the void, or do whatever one needs
13 to do to justify the drug use, he starts ingesting
14 embalming fluid. And he had two, I think three
15 times where he was hospitalized because they called
16 a wet overdose where he had so much chemical in his
17 body, I mean you could die.

18 THE COURT: I will recommend to the Regional
19 Director of the Bureau of Prisons that he be allowed
20 to participate in their intensive drug treatment
21 program.

22 MS GRADY: That would be great, Judge.

23 And we have some other requests on that, too.

24 But that is the reason for downward departure.

25 It is the extreme drug addiction that he has that

1 drove his behavior which got him into the situation
2 where he is now, which is, that he is driving drugs
3 up and down the east coast, up or down, the east coast
4 and in user quantity amounts. And he even had an
5 accident on the day he got arrested because he was
6 not -- he was not well. He was inebriated, he was
7 intoxicated, under the influence of drugs. There is
8 no evidence of alcohol. I meant to say under the
9 influence of drugs.

10 So he is somebody that has such a severe
11 addiction that this court should recognize that as,
12 was a driving force when he was 21 years old and got
13 that one, earned one conviction. And then when he
14 was 29 when he earned the second conviction. That
15 is a factor that The Court understands is a weighty
16 3553(a) factor. His character and his background.

17 So that is the second factor that I rely upon.

18 And the third factor is -- and, you know,
19 statistics agree or disagree depending on where you
20 find them -- and the statistics in this case have
21 Mr. Starkey being extremely punished or enhanced by
22 para-fluorofentanyl. And that from the United
23 States Office on Drugs and Crime, not Michigan, but
24 a United States commission looked and compared the
25 difference between para-fluorofentanyl and fentanyl

1 in terms of toxicity in relation to morphine. And
2 fentanyl is much worse than, and much more powerful,
3 than para-fluorofentanyl. And Mr. Starkey had one 1
4 point 34 grams of fentanyl and 123 grams of,
5 somewheres in the range, about 122 grams of
6 para-fluorofentanyl. So he was in a situation --

7 THE COURT: But each of them are potentially
8 lethal, depending upon how they are used, correct?

9 MS GRADY: Absolutely, Judge.

10 THE COURT: Okay.

11 MS GRADY: But what the nation did with crack
12 what they did with heroin, what they have done with
13 opiates, they are doing that with
14 para-fluorofentanyl and fentanyl. They are saying
15 it is a deadly drug, we are going to arrest and
16 incarcerate our way out of this problem. We are
17 going to take this guys off the streets for
18 tremendous periods of time.

19 And I am submitting that we have learned that
20 crack cocaine was wrong. We understood the
21 heroin -- and the guidelines have been adjusted --
22 not the heroin, but for crack cocaine. And we are
23 in that same boat here. We are going to find out in
24 five years, maybe less, that there is -- that this
25 punishment is not merited because the drug -- they

1 are just going to move on to something else. This
2 drug is being over weighted when in reality it is
3 not as strong as fentanyl. And the guidelines that
4 drive this are the para-fluorofentanyl, which is at
5 a level of 16 versus fentanyl which is 224.

6 So it is dramatically less when its guidelines
7 are dramatically higher. That is another factor
8 upon which I want this court to consider a lower
9 sentence.

10 I have 3553(a) factors that I can talk about at
11 the same time but, or does The Court want me -- I
12 sort laid out the three factors that I want the
13 court to consider, or should I keep going?

14 THE COURT: Go ahead. Tell me anything you
15 think I need to know in determining what sentence is
16 appropriate in the case.

17 MS GRADY: Okay. Thank you, Judge.

18 THE COURT: Go right ahead.

19 MS GRADY: As I indicated in the pleadings,
20 Mr. Starkey was arrested. He came in and he pled
21 guilty. Once the lab reports were accurate in terms
22 of what the actual weight was, because in this case
23 the actual weight of the baggy is dramatically, or
24 the glassine envelopes, dramatically was, is higher
25 than the actual weight of the drugs. The actual

1 weight of the drugs is so small that one could say
2 it is a user quantity. Like a Pepsi drug driving
3 down the road with cases of 12-ounce cans. It
4 wasn't a gasoline tanker full of gasoline that he
5 distributed, you know, as a broad rule. These are
6 user quantities that Mr. Starkey was driving, and I
7 would submit was driving to support his habit.

8 He -- the United States and I have sort of
9 disagreed on whether he is the driver or courier. I
10 don't mean to intend to imply that he is a mule,
11 that he is blind and he is just driving, you know,
12 something he doesn't know. He is a drug addict. He
13 knows what he is driving. But he is not the
14 profiteer. He is driving a rental car. He is an
15 extreme drug addict. No drug king pin is going
16 to -- no owner of those drugs is going to drive
17 those down the street in plain view wandering
18 around, you know, 95. It is Mr. Starkey who created
19 some really bad tracks for himself, but he is not
20 the owner of these drugs. He can't be. He doesn't
21 have that kind of money. There is no evidence of
22 that kind of money. He doesn't work. He hasn't
23 worked, at least a job where you get a pay check.
24 He has worked to try to support his kids, and visit
25 with his kids, and does things to try to be a good

1 dad. But he is not the mastermind or the king pin.
2 And that was my argument about the courier. I wasn't
3 saying he was blind. I'm saying he is not the
4 person who owns that. He is driving it to
5 distribute it. That is what, that is what the
6 United States says he told the police. Yeah,
7 distributing means, another word for giving it to
8 somebody. He is going somewhere to give it to
9 somebody. He is not going to distribute 4200
10 baggies. He is too high, and too focused on drugs
11 to be doing that. So I just don't think
12 that that -- it is a factor, but there is no
13 overdose that's related to him. There is no --
14 these are tweeny, tweeny amounts, which would be
15 consistent with actually intending small user
16 amounts and not placing it, not hiding it in
17 cocaine. These are tweeny weeny little glassine
18 packets.

19 So I would ask The Court to consider that.

20 You know, as I said, Judge, 3553(a) factors, he
21 has four children. One of -- the child was in Ms
22 Robinson's -- they were in Florida. That is, you
23 know that, is where she expected him. So she was
24 extremely disappointed to learn that he is doing
25 this.

1 The other two, the other three children, they
2 have been taken care of. They are in Delaware.
3 They are, you know, they are doing what kids do.
4 They are going to miss their dad. They are going to
5 miss their dad for a decade. He was being a good
6 dad prior to that.

7 I turn to -- as good a dad as he could in all
8 the circumstances under which we find him.

9 We have the letters which I think are really
10 some of the good letters, best letters I have seen
11 in a while, and they come from folks who care about
12 him.

13 THE COURT: They have been all been reviewed by
14 The Court. Thank you for submitting them.

15 MS GRADY: Yes, sir, Judge. You have his
16 letter I will deal with in a second, but his mother
17 deals with the challenges that her son indicated,
18 medication and such, but she talks about the murder
19 of their nephew, his, essentially, cousin.

20 And mother, is the mother of great nephew. So
21 somebody that is kin to him, like a son to me. And
22 Jaron was deeply affected by his loss and struggled
23 to process, was compounded by subsequent incidents,
24 violent death of his best friend, witnessing a close
25 cousin being shot multiple times, who later

1 succumbed to the gun violence. So he has a lot of
2 violence. To say that he grew up in a family
3 resembling any of ours is a falsity. He grew up in
4 a high crime area, he grew up in an area where
5 drugs, drug dealing, shootings, violence, was a
6 regular thing. Did his parents do the best they
7 could? Yes. They clearly are folks that have good
8 stability. I don't think that Mr. Starkey was
9 raised with the same kind of stability that any of
10 us have. And so that is why he has been really
11 hampered by the traumas that he sustained as a young
12 boy.

13 His father talks about him dreaming of owning a
14 business. Trying to work. He is a smart young man
15 clearly able to do something. Clearly able to want
16 to dream of a better life for himself and his kids.
17 That is what he dreams for now.

18 He has the letter that he submitted to The
19 Court. He talks about I have been using drugs since
20 I was 13 years. He said using drugs, you don't even
21 see things. You see things while your mind is
22 clouded. Being on drugs is a hard feeling for me to
23 describe. Even when using them I feel low and
24 worthless.

25 It is a self-deprecating escape from the world,

1 escape from your problems kind of situation. And he
2 has done wrong in the world. But a sentence that is
3 sufficient but not greater than necessary is a
4 sentence in the area of eleven years to 13 years,
5 not 20 to 22 years, which is what the career
6 offender guidelines take into account.

7 My goals, he said, from this point forward are
8 to be giving back to the community that I have taken
9 from. I plan to work towards rehabilitation and
10 strive to be the best man that I can be. He's going
11 to have a lot of time do that. And, you know, I am
12 not sugar coating it and asking for a lesser
13 sentence than I think what would be appropriate, and
14 would be fair been the 3553(a) factors.

15 So that is what I am asking for, Judge. I know
16 that I have a chance to respond, so I know The Court
17 has read the letters, and I, as I said, I think they
18 give a full picture in combination with
19 Mr. Starkey's criminal record.

20 On that closing note, the criminal record, as I
21 said, is not good. But it's something that
22 encompasses who he is, it's encompassed in the
23 guidelines of a criminal history category six.

24 Now, I am not saying anything less than a six.
25 I am saying a seven bump under the career offender

1 is not an appropriate bump and This Court should
2 sentence within the 130 to 162 months.

3 THE COURT: Thank you, Ms Grady.

4 Ms Mastandrea.

5 MS MASTANDREA: Thank you, Your Honor.

6 THE COURT: Address first the issue of whether
7 or not he should be treated as a career offender and
8 address any other points you want to raise with
9 respect to sentencing generally.

10 MS MASTANDREA: Sure. Thank you.

11 So, there is a couple of things that counsel
12 has raised in her filings and here before The Court,
13 so I would just like to talk for a moment if I may
14 about her motion for a downward variance.

15 The Court has determined that he qualifies as a
16 career offender, and basically what she is asking
17 this Court to do is grant him a 50 percent reduction
18 in his sentence.

19 In support of that she opines that
20 para-fluorofentanyl is less harmful compared to
21 fentanyl. But para--fluorofentanyl has been
22 determined to be more dangerous than fentanyl, which
23 has a 50 to one hundred time potency of methadone.
24 One of the reasons why para-fluorofentanyl is not,
25 doesn't have the historical level of overdoses and

1 deaths is because when the person died of an
2 overdose, the drug testing that was done on the body
3 was not able to detect para-fluorofentanyl until
4 more recently. So now that in a lot of places that
5 are able to detect para-fluorofentanyl they are
6 finding that overdose deaths due to
7 para-fluorofentanyl are significant. And Congress
8 has determined that para-fluorofentanyl is more
9 dangerous than fentanyl. To put up a crystal ball
10 to suggest one day they might not think that is not
11 where we are today. You have to look at where we
12 are today. And the courts have said, sorry, that
13 Congress has said that a hundred grams or more of
14 para-fluorofentanyl is a sentencing guideline range
15 of, or a mandatory minimum of ten years.

16 When she talked about the tweeny weeny bit of
17 drugs, I don't even know what that means. He had
18 four thousand four hundred and ninety-seven bags
19 containing para-fluorofentanyl. What happened is
20 the chemist randomly selects a number of them and
21 tests the quantities that are in them. Of those
22 bags that were tested, she determined that doing the
23 multiplication that he had over a hundred grams of
24 para-fluorofentanyl. But he also had fentanyl, and
25 he had 120 bags that contained fentanyl when he was

1 stopped. He admitted in a post Miranda statement
2 that he had gone to Delaware to get them for
3 distribution in North Carolina. There is absolutely
4 no indication that he is either a mule or just a
5 simple courier. But more importantly, he is not
6 even tasked or tagged with having a leadership role
7 or management role or any kind of role enhancement
8 in this case. So to talk about a drug king pin, I
9 think what the defense means is a leadership role or
10 a leader or organizer of a large scale drug
11 trafficking organization. That has not been applied
12 in this case. So that should just be a complete non
13 starter when we are looking at that. The courier
14 suggestion, again, is a complete non starter.

15 I want to just address her suggestion that if
16 he, if his two marijuana possession convictions were
17 not counted he would be closer to criminal history
18 category five and six. That doesn't even make sense
19 because if you take those -- he has 18 counted
20 criminal history points. If you took away the three
21 he has 15 countable criminal history points.
22 Criminal history category six is 13 or more. I
23 don't know you get closer to five than six even if
24 you took those away. He is still well above the
25 requirements in criminal history category six.

1 When we understand -- I want to talk about a
2 downward departure which defense has raised, and I
3 want to definitely address it.

4 Now, the seriousness, the reliable information
5 in the case is the defendant's criminal history
6 category substantially over represents the
7 seriousness of his criminal history or the
8 likelihood that he will commit other crimes a
9 downward departure will be warranted. That is the
10 standard.

11 Again, he is in criminal history -- he is well
12 into criminal history category six. He qualifies as
13 a career offender. And he does have violence in his
14 past. He has not been convicted of a violent crime
15 but he does have violence in his past. I would like
16 to address that for just a moment.

17 He had at 15 years old is when he began his
18 foray into the drug trade when he was caught with
19 eight plastic bags which tested positive for heroin.
20 He was circling around, and circling around with his
21 friend, and was caught with that.

22 He then proceeded as an adult to have a series
23 of criminal convictions, and the one I that want to
24 to talk about is one of the convictions that qualify
25 him under the career offender provision of the

1 guidelines. And that is where he was -- this is in
2 June of 2011 -- he removed his ex girl friend's lap
3 top from the apartment, punched out a window in her
4 car, and punched her in the face. At the time that
5 he did all this he was in possession of 69 grams of
6 PCP, as well as two firearms. So punching a girl,
7 ex girlfriend, in the face, being in possession of
8 firearms and being in possession of 69 grams of PCP
9 to me is a very serious, very serious offense.

10 These convictions were followed by not one or
11 two or three, but by four probation violations.
12 Demonstrating his failure to comply with the law,
13 follow the orders of the court. And then he has
14 numerous other probation violations.

15 The second violation that we have talked
16 about -- the first one in paragraph 30, this is
17 paragraph 40 -- is where he was going to sell
18 cocaine to an undercover officer where he had a
19 total of 26 bags of cocaine that he was selling.

20 Now, we bring him to what happened on the date
21 of his arrest here, where he has nearly 4,500 bags
22 containing para-fluorofentanyl, another 120 bags
23 containing fentanyl. That is not "a tweeny weeny"
24 bit. This is a significant amount of drugs. There
25 is a very small amount of these drugs that are

1 necessary to cause overdoses or deaths.

2 Defense counsel brought out, well, we don't
3 have any information that he caused any overdoses or
4 deaths. He is not charged with overdoses or death.
5 There is no enhancement for overdoses or deaths.
6 There is no enhancement for king pin. No
7 enhancement for a leadership role. There is no
8 enhancement for any of the things that is suggesting
9 would be relevant to a downward variance or
10 departure in this case.

11 I want to address also the argument that he had
12 a, she said he has a substance abuse disorder
13 because he grew up in a, quote, drug-infested home.
14 As I pointed out in my filing, the sister that was
15 supposedly the catalyst for him having a drug scene,
16 being in a drug-infested home, was 14 years older
17 than him. She wasn't even in the home by the time
18 he was seven years old. So these are, these are all
19 things he chose to do. He is now a grown man.
20 Acting like he is 14 years old, but he is not. He
21 is a 35-year-old. And his sister is 48 years old.
22 So, that should have absolutely no weight in terms
23 of the argument that is being made here.

24 The marijuana conviction we talked about. He
25 is still a category six. He is still a career

1 offender.

2 He has 21 convictions, 21 separate crimes that
3 he has been convicted of over the course of his
4 adult life. Thirty-four years old. He comes to
5 this court with all of these criminal convictions,
6 and yet even though he received some grace by the
7 state court in terms of the sentences that he
8 received in prior cases, he did not take that and
9 use that to his advantage. Instead, he is still
10 trafficking in drugs, and not just any drug, he is
11 trafficking in serious harmful drugs.

12 I cite to a CDC report about the dangers over
13 para-fluorofentanyl. There is no question that it
14 is. So just talking about his adult convictions, he
15 has a criminal contempt conviction, a felony,
16 conspiracy to engage in burglary conviction. He has
17 resisting arrest. He has possession with intent to
18 distribute. Possession of a firearm by a prohibited
19 person. Probation violation in 2012, 2014. Three
20 of them in 2014. Driving under the influence of
21 alcohol or drugs, with probation violations in 2016
22 and 2017. He has reckless driving and drug related
23 probation violations.

24 More reckless driving. Possession of
25 controlled dangerous substance not marijuana. He

1 has got a driving under influence multiple times.

2 Second time. Third time. Fourth time.

3 And then we get to the possession with intent
4 to distribute for which he received, for the
5 cocaine, and probation violation on that as well.

6 And he has after that possession of marijuana,
7 reckless driving, driving under the influence, and
8 then he comes to court here today with four thousand
9 nine hundred bags containing para-fluorofentanyl and
10 over 120 bags containing fentanyl. This gentleman
11 is the quintessential career offender. He is
12 thirty-five years old. The sentence that he is
13 looking at is significant, but it is significant for
14 a reason. The reason is that all of the guidelines
15 have been properly computed, there is nothing that
16 has been added that the defense argues that, you
17 know, he is not a king pin, he is not a leader, not
18 a manager, not an organizer. There is no additional
19 points for that.

20 As to noncarrier offender sentence, that would
21 be inconsistent with the need to avoid an
22 unwarranted sentencing disparity.

23 Mr. Starkey has earned the guideline range of
24 262 to 327 months, and the need to protect the
25 public, the need for this court to show that he

1 needs to have respect for the law, the need to
2 reflect the seriousness of the crime that brings him
3 before this court, and to hopefully provide some
4 adequate deterrence is to sentence him within the
5 career offender guidelines. This is a very serious
6 crime that he comes before a federal court and is
7 facing. He has such a significant criminal history.
8 His criminal history category is six under any view
9 of his record, and the fact that he is a career
10 offender has been earned by him.

11 He is not a boy. He is a man. And he needs to
12 finally come to terms with the fact that he is
13 facing a serious sentence for having committed
14 serious criminal activity.

15 Hopefully he will get drug treatment while he
16 is incarcerated, get some training and will still be
17 a fairly young man when he gets out of prison,
18 whatever this court decides to impose.

19 So, thank you, Judge. Nothing further.

20 THE COURT: All right. Yes, ma'am.

21 All right. I will give you a chance to
22 respond, Ms Grady.

23 MS GRADY: Thank you, Judge. Understanding
24 that tweeny weeny is not an appropriate drug weight,
25 I did pull the lab report which was done which

1 indicates, it is in Government's exhibit bates
2 number 800 and 801, indicates that the weight of the
3 glassine baggy which contained the
4 para-fluorofentanyl was point 0303. So 300th of a
5 gram, I believe is what that is. Point zero three.
6 So, that is what I meant by tweeny weeny.

7 THE COURT: Now, as I understand, the other,
8 collectively, the other 120 bags of fentanyl had a
9 total weight of about four and quarter pounds; is
10 that correct?

11 MS GRADY: No, that is all the baggies. That
12 is the issue. The baggies weighed more than the
13 drugs. The actual drug weight for the fentanyl was
14 1.34 grams.

15 THE COURT: Okay. Thank you for clarifying
16 that.

17 MS GRADY: Yeah, it was a, it was confusing and
18 that is why we had the lab retest just, because
19 there was tremendous amount of baggies, just not as
20 much drugs.

21 So, the drug weight of the four thousandish
22 glassine baggies was only 122 grams. So the weight
23 is in the baggies, which, of course, is not illegal.
24 Of course that is not what the guidelines were
25 calculated on. The guidelines were calculated on

1 para-fluorofentanyl, and that is calculated
2 guideline of 130 to 162. So I am saying that -- I
3 am not -- I am -- we are not in a position to say
4 whether it is more dangerous or less than. The
5 United States makes a valid point. But there is
6 also a valid point that the guidelines as they
7 calculated are para-fluorofentanyl taking into
8 account the weight. I just don't like the way they
9 are put on that and -- because of the statistics
10 that I showed The Court.

11 But the valid para-fluorofentanyl, giving it
12 all the weight that Congress and the Sentencing
13 Commission wanted to give it, the sentencing
14 Guidelines were 130 to 162.

15 The United States says that he is man not a
16 boy, but every one of us is affected and structured
17 by what happened as a child. He can't ignore that.
18 So, yes, he is a man, but as a boy started using
19 drugs. And as a boy turning into a man started
20 injecting embalming fluid in his brain, in his body.
21 He is not a well individual. And so the judgment
22 that comes through to him, and the criminal acts
23 that he did, the drivings and the things like that,
24 that is what The Court needs to take into account.
25 Yes, did his sister 12 years older than him force

1 drugs down his body when he was little? No. But
2 was that part of the household, was that part of his
3 foundation? Yes.

4 Lastly, Judge, she argued about the, his
5 criminal record, if you look at -- I am sure you
6 have -- the criminal violations, probation
7 violations were for drug use. And The Court
8 recognized, and he was ordered to go into this
9 program and that program to try to help him. And,
10 no, his substance disorder was so severe with
11 embalming fluid or PCP, which is the drug that was
12 ingested with the embalming fluid, he just couldn't
13 rise to heal himself, being so damaged in his brain.

14 So, the probation violations are numerous, but
15 they are for drug use. The most time he has ever
16 has served in his entire life is 18 months.

17 Lastly, Judge, the sentencing disparity, the
18 United States said he needs to be sentenced within
19 the career offender guideline because he is career
20 offender. And I get that. Except that the United
21 States Sentencing Commission has said the average
22 sentence for non violent career offender is 13
23 months, which means courts are recognizing that.
24 And it would be actually --

25 THE COURT: Are courts recognizing that, or is

1 the Sentencing Commission recognizing that?

2 MS GRADY: The Sentencing Commission -- good
3 point, Judge -- the Sentencing Commission is
4 recognizing that the courts are sentencing career
5 offenders --

6 THE COURT: Okay.

7 MS GRADY: -- downward.

8 So the inarticulate way I said it.

9 But the fact of the matter is judges all over
10 the country, yes, that would actually, if that is an
11 average, that means that some judges are going, some
12 120 and some going to 180. Is this a particular
13 situation where maybe Mr. Starkey should receive a
14 sentence that is somewhere between the non career
15 offender guidelines and career offender guidelines?
16 Is there something that would be, something that
17 reflects the seriousness of the offense that
18 punishes him sufficiently and gives him all the
19 programming and training that he needs and reflects
20 the seriousness of the offense? That would be 180
21 months. Which would be something that could be
22 sufficient but not greater than necessary, but
23 certainly is not the 262. That is 22 years. That
24 is over 15 times what 18 months is. So, this court
25 has to know that when you do the guidelines, when

1 the courts upwardly vary and they would have to
2 justify the, the -- I go two levels because that is
3 not sufficient. I go up another two levels because
4 that is not sufficient. In this case we have no,
5 no, argument between 130 for a non career offender
6 guideline, or 162 plus for a career offender
7 guideline. There has to be a medium ground for
8 Mr. Starkey that doesn't treat him as a career
9 offender even though The Court has ruled that he is
10 one, because The Court has the overarching duty to
11 sentence him to what is sufficient and not greater
12 than necessary.

13 And I submit anything over 162 or 180 is
14 greater than necessary. He has not received a
15 sentence that is anything greater than 18 months.
16 And so he has not had the opportunity to learn from
17 a ten-year sentence, from a 12-year sentence, from a
18 15-year sentence. The Court can't just assume that
19 he is going to be punished sufficiently but not
20 greater than necessary with a 22-year sentence.
21 That is just not right.

22 So lastly, Judge, with Mr. Starkey he has been
23 family sort of up and down the east cost, and I know
24 that Your Honor has previously mentioned that he
25 needs severe drug treatment through the 500 hour

1 program if he is eligible. It will be a while
2 before he gets there, because has a long sentence he
3 has got to work through the process.

4 He also needs educational and vocational
5 training. I would submit that the losses that are
6 mentioned in the letters, defendant's exhibits one
7 through four, talk about the losses that he has
8 received. I think he should receive, if he wants,
9 some mental health counseling to deal with that.
10 Because he is a damaged young man, and he has losses
11 that he has to process.

12 THE COURT: I will include those in the
13 sentence. If I omit any of them, don't fail to
14 bring them to my attention.

15 MS GRADY: Okay.

16 THE COURT: I have a lot here. If I miss
17 something, I agree with all of those. I will make
18 those recommendations. So if I fail to mention one,
19 please prompt me, okay?

20 MS GRADY: I will, Judge.

21 Lastly, as I was saying, the last request down
22 the list would be that I know that The Court can
23 recommend where he goes. He has children in -- a
24 child in Florida and some children in Delaware. I
25 was hoping that he would be recommended to be either

1 in North Carolina or South Carolina, which would
2 allow easier visits for his family. He has some
3 folks in North Carolina. So, we are asking The
4 Court to recommend to the Bureau of Prisons,
5 assuming he qualifies, that he could be placed in a
6 North Carolina or South Carolina institution.

7 THE COURT: That is a very reasonable request.

8 MS GRADY: Tank you, Judge.

9 THE COURT: All right.

10 Before I hear from him, I will rule on the
11 motions that are before me, and then I will hear
12 from him.

13 Counsel has very vigorously argued that the
14 defendant should not be considered as a career
15 offender, or that there should be some form of
16 downward variance in this case because there appears
17 to be over representation of his criminal history.
18 The Court does not believe the record supports those
19 arguments, although the arguments were made in good
20 faith.

21 The record reflects a continuing course of
22 criminal conduct. Almost unpunctuated. He has 18
23 criminal history points, thirteen more than are
24 required to be a career offender. Five felony
25 convictions, two involve drug trafficking.

1 He has extensive history of probation and
2 supervised release violations. He has not taken
3 advantage any programs previously during his periods
4 of incarceration, and apparently they have not
5 changed his criminal behavior.

6 Prior periods of confinement have had no
7 deterring effect. He resumes his criminal activity
8 almost immediately after release. In the immediate
9 case he had a very significant amount of fentanyl.
10 Had lethal dosages, potentially legal dosages that
11 he was placing into the stream of commerce. So I
12 think he falls squarely within the definition of a
13 career offender, and the motion to treat him
14 otherwise is denied.

15 I will hear from him before I decide what
16 sentence is appropriate in the case.

17 All right, Mr. Starkey, if you will come
18 forward with your attorney, please.

19 I have heard your attorney's presentation, and,
20 as always, she has done a wonderful job doing the
21 best she can to represent you. The problem is your
22 record is extensive. And it goes back to your
23 teenage years. It seems like every time you have
24 been arrested and served time, within a year or so
25 you are back at on the streets doing it again. That

1 is why you are a career offender. Throughout your
2 entire life you have been devoted to criminal
3 activity. That is why you face a substantial
4 sentence today. But before I decide what sentence
5 is appropriate I want to hear from you.

6 Go right ahead.

7 THE DEFENDANT: Good morning.

8 THE COURT: Good morning, sir.

9 THE DEFENDANT: I apologize to The Courts and
10 my family. This is probably the worst situation I
11 ever been in in my life, so I am trying to learn
12 from it.

13 THE COURT: You are finally being held
14 accountable for your conduct, sir.

15 THE DEFENDANT: Pretty much.

16 I am trying to learn so I don't continue to do
17 that as I progress through this hardship. I don't
18 have too much to say. I just want to apologize for
19 being here today. I am ready to accept my
20 responsibility.

21 THE COURT: All right.

22 Well, The Court has determined that the U S
23 Sentencing guidelines are properly computed by the
24 U.S. Probation Officer. They will be considered by
25 The Court as advisory only.

1 I have reviewed the 3553(a) factors which I
2 have recited on the record. And this Court believes
3 that a sentence that is adequate but not longer than
4 necessary is you be committed to the U.S. Bureau of
5 Prisons for a term of 300 months on count one. The
6 Court recommends that the defendant participate in
7 any educational or vocational training or substance
8 abuse, or mental health programs, that are available
9 at your institution of designation if you qualify,
10 or if they are available within the Bureau of
11 Prisons.

12 Upon your release from confinement you will be
13 placed on supervised release for a term of five
14 years on count one. Upon your release you must
15 report to the probation office in the federal
16 judicial district where you are authorized to reside
17 within 72 hours of your release from imprisonment
18 unless the probation officer instructs you to report
19 to a different probation office or within a
20 different time frame. While on supervision the
21 defendant shall not commit another federal, state or
22 local crime, shall not unlawfully possess a
23 controlled substance, and shall not own, possess or
24 have access to a firearm, ammunition, destructive
25 device, or dangerous weapon. A dangerous weapon

1 being anything that was designed or was modified for
2 the specific purpose of causing bodily injury or
3 death to another person, such as nunchucks or
4 tasers.

5 The defendant shall comply with the standard
6 conditions of supervised release that are outlined
7 in the presentence report and incorporated in this
8 judgment by reference.

9 I assume you have been over these conditions of
10 supervised release with him.

11 MS GRADY: I have, Judge. A while ago, but
12 yes, I have.

13 THE COURT: Okay, very well.

14 The defendant shall also comply with the
15 following special conditions. If the defendant
16 tests positive for a controlled substance or shows
17 signs of alcohol abuse, the defendant shall
18 participate in a program approved by the United
19 States Probation Office for substance abuse
20 treatment, which program may include residential
21 treatment and testing to determine whether the
22 defendant has reverted to the use of drugs or
23 alcohol, partial cost to be paid by the defendant.
24 All as directed by the probation officer.

25 The defendant shall participate in a program

1 approved by the United States Probation Office for
2 mental health treatment. The cost of these programs
3 are to be paid by the defendant as directed by his
4 probation officer.

5 The defendant shall waive all rights of
6 confidentiality regarding substance abuse and mental
7 health treatment in order to allow the release of
8 information to the United States Probation Office,
9 and authorize communication between the probation
10 office and the treatment provider.

11 This Court has considered the defendant's net
12 worth, liquid assets, his life style and financial
13 needs as reflected in the presentence report, his
14 earning potential and the dependents relying on his
15 support. The Court finds that the defendant is not
16 capable of paying a fine. As to count one the
17 defendant shall pay a special assessment in the
18 amount of one hundred dollars, which is due and
19 payable immediately; which is due in full
20 immediately and payable during his period of
21 confinement. Any remaining balance unpaid on the
22 special assessment at the inception of supervised
23 release shall be paid by the defendant in
24 installments of not less than \$25 per month until
25 paid in full. Those payments shall commence 60 days

1 after the defendant's supervised release begins.
2 Payment of any unpaid balance shall become a special
3 condition of his supervised release. Any forfeiture
4 ordered previously entered in this case will become
5 a part of the judgment in this case.

6 Mr. Starkey, you have a right -- you have
7 waived most all of your rights of appeal in this
8 case, but if there is anything you wish to appeal
9 that appeal must be noted within 14 days. Should a
10 higher court determine that the U.S. Sentencing
11 Guidelines are improperly calculated in this case
12 this court would find that a non guideline sentence
13 of 300 months would be appropriate based upon the
14 record at hand and the prior criminal history. You
15 will receive credit for any time you have served
16 awaiting disposition of this case.

17 And I am going to recommend to the Regional
18 Director of the Bureau of Prisons he be designated
19 to a facility close to the North Carolina or South
20 Carolina area.

21 That you be allowed to participate in any
22 program of substance abuse treatment. And you will
23 receive an opportunity to complete your education.
24 And that you will be receiving any other vocational
25 training available at your level of institution.

1 I am also going to recommend to the Director of
2 the Bureau Prisons that you be allowed to
3 participate in any mental health programs that may
4 be available at your institution of designation.

5 As I mentioned to you you will receive credit
6 for any time you have served awaiting disposition of
7 this case.

8 Anything further today, Ms Grady?

9 MS GRADY: Just to note, Judge, I know most
10 folks do waive the right to appeal. Mr. Starkey
11 didn't have a plea agreement, so just so the record
12 is clear.

13 THE COURT: I'm sorry. I take that back.

14 MS GRADY: It's 95 percent of the folks do
15 waive, so I understand The Court's issue.

16 THE COURT: That is fine.

17 Yes, ma'am?

18 MS MASTANDREA: The United States moves to
19 dismiss the original indictment in this case.

20 THE COURT: That motion is granted. The
21 original indictment will be dismissed.

22 MS GRADY: Thank you, Judge.

23 THE COURT: All right.

24 If there is nothing further, Mr. Starkey, I
25 wish you the very best of luck, sir. You will still

1 be a young man, have a chance to get your life
2 turned around. But, you know, you are not getting
3 any younger. If you want to make something of
4 yourself, see yourself be successful, spend time
5 with your family, you have to correct your behavior
6 and get a better grip on good values in life.

7 You are remanded to the custody of the U.S.
8 Marshal.

9 The Court will stand in recess.

10

11 HEARING ADJOURNED

12

13 THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT.

14

15 GILBERT FRANK HALASZ

16 Official Court Reporter

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